

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

TEVRA BRANDS LLC,  
Plaintiff,

v.

BAYER HEALTHCARE LLC, et al.,  
Defendants.

Case No. [19-cv-04312-BLF](#) (VKD)

**ORDER RE DISCOVERY DISPUTE RE  
TEVRA'S DOCUMENT REQUESTS TO  
BAYER HEALTHCARE**

Re: Dkt. No. 121

Plaintiff Tevra Brands LLC (“Tevra”) and defendant Bayer HealthCare LLC (“BHC”) ask the Court to resolve their dispute regarding several of Tevra’s document requests to BHC. Dkt. No. 121. The Court held a hearing on this matter on July 14, 2020. Dkt. No. 125.

The Court orders as follows:

**1. Requests Nos. 19 and 20**

Tevra’s Requests Nos. 19 and 20 seek “all organizational charts” and “all job descriptions” created by BHC with respect to certain job functions. Dkt. No. 121-1 at 8-9. Tevra argues that organizational charts and job descriptions maintained by BHC’s German co-defendants, Bayer AG and Bayer Animal Health GmbH, are within BHC’s possession, custody or control and should be produced. Dkt. No. 121 at 2-3. BHC says that it does not have possession, custody or control of charts and descriptions maintained by Bayer AG or Bayer Animal Health GmbH. *Id.* at 6.

During the hearing, the Court observed that Requests Nos. 19 and 20 appear to be directed to charts and job descriptions created by BHC only and not by the two German defendants. Moreover, Tevra acknowledged that it could seek discovery of organizational charts and job descriptions directly from defendants Bayer AG and Bayer Animal Health GmbH. Accordingly,

1 Tevra has withdrawn its request for an order compelling production of additional documents from  
2 BHC as to Requests Nos. 19 and 20, and the Court finds that this dispute is moot.

3 **2. Requests Nos. 27-31**

4 Tevra's Requests Nos. 27-31, collectively, seek broad discovery of all documents  
5 regarding a proposed transaction between Elanco Animal Health, Inc. and Bayer AG. However, in  
6 the discovery dispute letter, Tevra advises that it principally seeks "documents produced by Bayer  
7 to the FTC regarding its proposed sale of the Bayer Animal Health division of the U.S. defendant  
8 BHC" to Elanco and "representations made" by Bayer to the FTC about the proposed sale. *Id.* at

9 3. Tevra argues that these documents are relevant to the issue of market definition, as they likely  
10 include representations by Bayer and Elanco about the nature of the market for flea and tick  
11 treatments, which is also at issue in this action. Tevra again argues that any responsive documents  
12 maintained by either of the two German defendants are within the possession, custody or control  
13 of BHC, a domestic subsidiary of Bayer AG. *Id.* at 3-4. BHC acknowledges that it has some  
14 documents related to the proposed Elanco transaction but that many responsive documents,  
15 "including the HSR filing sought by Tevra," are not in BHC's possession, custody or control, as  
16 those documents likely are maintained by Bayer AG. BHC also objects to the breadth of Requests  
17 Nos. 27-31 as encompassing material that is not relevant to any claim or defense. *Id.* at 7-8.


18 The Court concludes that representations made and documents produced by a Bayer entity  
19 to the FTC regarding Bayer AG's proposed sale of the Bayer Animal Health division to Elanco are  
20 likely to include information relevant the definition of the market at issue in this action. However,  
21 Tevra has not shown that it should be permitted to obtain documents responsive to the full scope  
22 of Requests Nos. 27-31. In addition, Tevra has not demonstrated that BHC has the legal right to  
23 obtain responsive documents upon demand from Bayer AG or Bayer Animal Health GmbH. *See*  
24 *In re Citric Acid Litigation*, 191 F.3d 1090, 1107-08 (9th Cir. 1999) (adopting legal control test).

25 Accordingly, BHC must produce only documents reflecting or constituting representations  
26 made and documents produced by a Bayer entity to the FTC regarding Bayer AG's proposed sale  
27 of the Bayer Animal Health division to Elanco that are within BHC's possession, custody or  
28 control. Documents maintained solely by Bayer AG and Bayer Animal Health GmbH are not

1 within BHC's possession, custody or control. If BHC has not yet completed this production, it  
2 shall do so promptly. If BHC contends that any documents within the scope of this order are  
3 privileged or otherwise protected from disclosure, it shall provide an appropriate privilege log to  
4 preserve any such objections to production.

5 **IT IS SO ORDERED.**

6 Dated: July 16, 2020

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9 VIRGINIA K. DEMARCHI  
United States Magistrate Judge

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United States District Court  
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